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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,292	09/20/2005	Herbert Kurz	18840	1901
272	7590	03/16/2007	EXAMINER	
SCULLY, SCOTT, MURPHY & PRESSER, P.C. 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530			LOPEZ, FRANK D	
		ART UNIT	PAPER NUMBER	3745
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/16/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/550,292	KURZ ET AL.	
	Examiner	Art Unit	
	F. Daniel Lopez	3745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11 December 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/11/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

Applicant's arguments filed December 11, 2006, have been fully considered but they are not deemed to be persuasive.

The examiner agrees that the feature of the instant application, wherein a bore (19b), formed either in the cam disc (fig 3) or in a guide element (42) fitted to the cam disc (fig 6), is offset from the guide center axis, is not shown by the cited prior art. The problem is defining the limitations so that this is claimed.

Claim 1 claims "a first positioning device with positively cooperating positioning elements" (line 8-9) and "a single said positioning element being arranged on the cam disc offset transversely to the guide center axis in an oblique axis plane" (line 12-13). There appears to be three positioning elements in the instant invention, the bore 19b, the pin 19a and the slider 32a, with its bore for the pin. Since the bore 19b and the pin 19a are both on the cam disc, the "single said positioning element" appears to be wrong.

Since the pin of Moya or Gollner is offset transversely to the guide center axis in an oblique axis plane, they also meet this claim limitation. Since the spur gearing of Wiggermann, formed by the grooves 41, is offset transversely to the guide center axis in an oblique axis plane (e.g. fig 7), it also meets this claim limitation.

Applicant's argues that the limitation "the cam disc is able to be installed in a further position rotated by approximately 180 degrees" is not shown by Moya, Gollner or Wiggermann. The examiner disagrees. The cam discs of Moya, Gollner and Wiggermann appear to be symmetrical, and as such, can be rotated by 180 degrees. This 180 degree rotation will not significantly change the position of the cylinder block, but applicant is not claiming that. The term further is interpreted as being another, not a different position.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

Claims 1-14 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 12 “a single said positioning element” should be either – positioning elements—or –one of the positioning elements--, since line 9 claims “positioning elements”.

In claim 2 line 3 “cylinder drum” should be –cylinder block--, to agree with claim 1 line 2.

Claims not specifically mentioned are indefinite, since they depend from one of the above claims.

Claim Rejections - 35 USC § 102

Claims 1-5, 7, 8 and 15-18 are rejected under 35 U.S.C. § 102(b) as being anticipated by either Moya or Gollner. Moya discloses an axial piston machine comprising a drive disc (6) and cylinder block (8) rotatably mounted relative to one another about longitudinal center axis which extend obliquely to each other in an oblique plane; a cam disc (18) having an arc shaped guide element facing and supporting the cylinder block, and having a guide center axis coaxial with the cylinder block axis; the cam disc having a first positioning device with a positioning element (25) arranged offset to the guide center axis. Gollner has elements similar to Moya, except that the guide element is a pin (fig 1) connected to a second pin (8).

Claims 1, 3-8 and 15-19 are rejected under 35 U.S.C. § 102(b) as being anticipated by Wiggemann. Wiggemann discloses an axial piston machine comprising a drive disc (32) and cylinder block (7) rotatably mounted relative to one another about longitudinal center axis which extend obliquely to each other in an oblique plane; a cam disc (34) having an cylindrically shaped guide element facing and supporting the cylinder block, and having a guide center axis coaxial with the cylinder block axis; the cam disc having a first positioning device with a recess (spur gear grooves 41) arranged offset to the guide center axis and interacting with an adjusting pin (of rack 45).

Conclusion

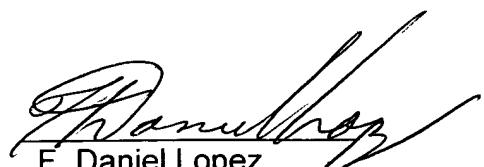
Claims 9-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is 571-272-4821. The examiner can normally be reached on Monday-Thursday from 6:15 AM -3:45 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on 571-272-4820. The fax number for this group is 571-273-8300. Any inquiry of a general nature should be directed to the Help Desk, whose telephone number is 1-800-PTO-9199.



F. Daniel Lopez
Primary Examiner
Art Unit 3745
March 9, 2007